

Chapter 70.155 RCW
TOBACCO -- ACCESS TO MINORS

SECTIONS

[70.155.005](#) Finding.

[70.155.010](#) Definitions.

[70.155.020](#) Cigarette wholesaler or retailer licensee duties -- Prohibition sign to be posted.

[70.155.030](#) Cigarette machine location.

[70.155.040](#) Cigarettes must be sold in original package -- Exception.

[70.155.050](#) Sampling -- License required.

[70.155.060](#) Sampling in public places.

[70.155.070](#) Coupons.

[70.155.080](#) Purchasing, possessing, or obtaining tobacco by persons under the age of eighteen -- Civil infraction -- Courts of jurisdiction.

[70.155.090](#) Age identification requirement.

[70.155.100](#) Penalties, sanctions, and actions against licensees.

[70.155.110](#) Liquor control board authority.

[70.155.120](#) Youth tobacco prevention account -- Source and use of funds.

[70.155.130](#) Preemption of political subdivisions.

[70.155.900](#) Severability -- 1993 c 507.

RCW 70.155.005

Finding.

The legislature finds that while present state law prohibits the sale and distribution of tobacco to minors, youth obtain tobacco products with ease. Availability and lack of enforcement put tobacco products in the hands of youth.

Federal law requires states to enforce laws prohibiting sale and distribution of tobacco products to minors in a manner that can reasonably be expected to reduce the extent to which the products are available to minors. It is imperative to effectively reduce the sale, distribution, and availability of tobacco products to minors.

[1993 c 507 § 1.]

NOTES:

Minors and tobacco: [RCW 26.28.080](#). Taxation: Chapters 82.24 and 82.26
RCW. Tobacco on school grounds: [RCW 28A.210.310](#).

RCW 70.155.010

Definitions.

The definitions set forth in [RCW 82.24.010](#) shall apply to [RCW 70.155.020](#) through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

- (1) "Board" means the Washington state liquor control board.
- (2) "Minor" refers to an individual who is less than eighteen years old.
- (3) "Public place" means a public street, sidewalk, or park, or any area open to the public in a publicly owned and operated building.
- (4) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.
- (5) "Sampler" means a person engaged in the business of sampling other than a retailer.
- (6) "Sampling" means the distribution of samples to members of the general public in a public place.
- (7) "Tobacco product" means a product that contains tobacco and is intended for human consumption.

[1993 c 507 § 2.]

RCW 70.155.020

Cigarette wholesaler or retailer licensee duties -- Prohibition sign to be posted.

A person who holds a license issued under [RCW 82.24.520](#) or 82.24.530 shall:

- (1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and
- (2) Display a sign concerning the prohibition of tobacco sales to minors.

Such sign shall:

- (a) Be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee;
- (b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and
- (c) Be provided free of charge by the liquor control board.

[1993 c 507 § 3.]

RCW 70.155.030

Cigarette machine location.

No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise. The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways.

[1994 c 202 § 1; 1993 c 507 § 4.]

RCW 70.155.040

Cigarettes must be sold in original package -- Exception.

No person shall sell or permit to be sold cigarettes not in the original unopened package or container to which the stamps required by [RCW 82.24.060](#) have been affixed.

This section does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of sixty percent of annual gross sales from the sale of tobacco products.

[1993 c 507 § 5.]

RCW 70.155.050

Sampling -- License required.

(1) No person may engage in the business of sampling within the state unless licensed to do so by the board. If a firm contracts with a manufacturer to distribute samples of the manufacturer's products, that firm is deemed to be the person engaged in the business of sampling.

(2) The board shall issue a license to a sampler not otherwise disqualified by [RCW 70.155.100](#) upon application and payment of the fee.

(3) A sampler's license expires on the thirtieth day of June of each year and must be renewed annually upon payment of the appropriate fee.

(4) The board shall annually determine the fee for a sampler's license and each renewal. However, the fee for a manufacturer whose employees distribute samples within the state is five hundred dollars per annum, and the fee for all other samplers must be not less than fifty dollars per annum.

(5) A sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. A person engaged in sampling under the license shall carry the license or a copy at all times.

[1993 c 507 § 6.]

RCW 70.155.060

Sampling in public places.

(1) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to sampling (a) in an area to which persons under the age of eighteen are denied admission, (b) in or at a store or concession to which a retailer's license has been issued, or (c) at or adjacent to a production, repair, or outdoor construction site or facility.

(2) Notwithstanding subsection (1) of this section, no person may distribute or offer to distribute samples in or on a public street, sidewalk, or park that is within five hundred feet of a playground, school, or other facility when that facility is being used primarily by persons under the age of eighteen for recreational, educational, or other purposes.

[1993 c 507 § 7.]

RCW 70.155.070

Coupons.

No person shall give or distribute cigarettes or other tobacco products to a person by a coupon if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store.

[1993 c 507 § 8.]

RCW 70.155.080

Purchasing, possessing, or obtaining tobacco by persons under the age of eighteen -- Civil infraction -- Courts of jurisdiction.

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under [chapter 7.80 RCW](#) and is subject to a fine as set out in [chapter 7.80 RCW](#) or participation in up to four hours of community service, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section.

[1998 c 133 § 2; 1993 c 507 § 9.]

NOTES:

Finding -- Intent -- 1998 c 133: "The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products." [1998 c 133 § 1.]

RCW 70.155.090

Age identification requirement.

(1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer, sampler, or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: Liquor control authority card of identification of a state or province of Canada; driver's license, instruction permit, or identification card of a state or province of Canada; "identocard" issued by the Washington state department of licensing under [chapter 46.20 RCW](#); United States military identification; passport; or merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under [*RCW 26.28.080](#)(4) that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence.

[1993 c 507 § 10.]

NOTES:

***Reviser's note:** [RCW 26.28.080](#) was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

RCW 70.155.100

Penalties, sanctions, and actions against licensees.

(1) The liquor control board may suspend or revoke a retailer's license held by a business at any location, or may impose a monetary

penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated [RCW 26.28.080](#), 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under [RCW 82.24.530](#) and 70.155.050 and 70.155.060 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of [RCW 26.28.080](#) or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of [RCW 70.155.030](#), a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of [RCW 70.155.040](#) occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of [RCW 70.155.050](#) and 70.155.060, a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of [RCW 70.155.070](#), a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer or licensed sampler if the liquor control board finds that the person has violated [RCW 26.28.080](#), 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of [RCW 26.28.080](#) or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of [RCW 70.155.030](#), one hundred dollars for each day upon which such violation occurred;

(c) For violations of [RCW 70.155.040](#), one hundred dollars for each violation;

(d) For violations of [RCW 70.155.050](#) and 70.155.060, three hundred dollars for each violation;

(e) For violations of [RCW 70.155.070](#), one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, [RCW 26.28.080](#) or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of [RCW 26.28.080](#) or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid

within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with [chapter 34.05 RCW](#).

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances.

[1998 c 133 § 3; 1993 c 507 § 11.]

NOTES:

Finding -- Intent -- 1998 c 133: See note following [RCW 70.155.080](#).

RCW 70.155.110

Liquor control board authority.

(1) The liquor control board shall, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and *[RCW 26.28.080](#)(4) and 82.24.500. The liquor control board shall have full power to revoke or suspend the license of any retailer or wholesaler in accordance with the provisions of [RCW 70.155.100](#).

(2) The liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and *[RCW 26.28.080](#)(4) and 82.24.500, a peace officer or enforcement officer of the liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the liquor control board.

(4) The liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance.

[1993 c 507 § 12.]

NOTES:

***Reviser's note:** [RCW 26.28.080](#) was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

RCW 70.155.120

Youth tobacco prevention account -- Source and use of funds.

(1) The youth tobacco prevention account is created in the state treasury. All fees collected pursuant to [RCW 82.24.520](#) and 82.24.530 and funds collected by the liquor control board from the imposition of monetary penalties and samplers' fees shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor control board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products are available to individuals under the age of eighteen. The agreements shall also set forth requirements for data reporting by the liquor control board regarding its enforcement activities.

(4) The department of health and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco intervention strategies to prevent and reduce tobacco use by youth.

[1993 c 507 § 13.]

RCW 70.155.130**Preemption of political subdivisions.**

This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by [RCW 70.155.020](#) through 70.155.080. This chapter does not otherwise preempt political subdivisions from adopting ordinances regulating the sale, purchase, use, or promotion of tobacco products not inconsistent with chapter 507, Laws of 1993.

[1993 c 507 § 14.]

RCW 70.155.900**Severability -- 1993 c 507.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1993 c 507 § 20.]